

# **Exhibit 1**

NlVsHER1

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x  
4 HERMÈS INTERNATIONAL. et al.,

5 Plaintiffs,

6 v.

22 Civ. 384 (JSR)

7 MASON ROTHSCHILD,

8 Defendant.  
9 -----x

New York, N.Y.  
January 31, 2023  
9:30 a.m.

10 Before:

11 HON. JED S. RAKOFF,

12 District Judge  
13 -and a Jury-

14 APPEARANCES

15 BAKER & HOSTETLER LLP  
16 Attorneys for Plaintiffs  
17 BY: DEBORAH A. WILCOX  
18 OREN J. WARSHAVSKY  
19 GERALD J. FERGUSON

20 HARRIS ST. LAURENT & WECHSCLER LLP  
21 Attorneys for Defendant  
22 BY: ADAM B. OPPENHEIM  
23 JONATHAN A. HARRIS

24 LEX LUMINA PLLC  
25 Attorneys for Defendant  
BY: RHETT O. MILLSAPS, II

Nlvnher2

Mentzer - Cross

1 A. No.

2 Q. Did you ever look at the MetaBirkins Twitter account?

3 A. I don't believe so.

4 MR. MILLSAPS: I have no further questions at this  
5 time, your Honor.

6 THE COURT: Any redirect?

7 MR. FERGUSON: No redirect, your Honor.

8 THE COURT: Thank you very much.

9 You may step down.

10 THE WITNESS: Okay.

11 (Witness excused)

12 THE COURT: Am I right that Mr. Rothschild is going to  
13 be the next witness?

14 MR. WARSHAVSKY: No, your Honor. It will first be  
15 Mr. Martin.

16 THE COURT: Okay.

17 Please call your witness.

18 MR. WARSHAVSKY: Plaintiffs will call Nicholas Martin.

19 NICHOLAS MARTIN,

20 called as a witness by the Plaintiff,

21 having been duly sworn, testified as follows:

22 THE COURT: Now, we have a translator here?

23 THE INTERPRETER: Yes, your Honor.

24 THE COURT: Identify yourself for the record.

25 THE INTERPRETER: Bertrand Sciberras.

Nlvnher2

Martin - Direct

1 in?

2 A. I think it covers a little bit more than 35 different  
3 countries.

4 Q. What is your position at Hermès International?

5 A. I am the group general counsel.

6 Q. Can you briefly describe your responsibilities as the group  
7 general counsel?

8 A. I head the legal team in France and abroad, and I am in  
9 charge of all legal topics for all entities in all the world.

10 Q. Have you always held this position?

11 A. No.

12 Q. How long have you worked at Hermès International?

13 A. Almost 19 years.

14 Q. I am just going to back up a little bit and ask you a few  
15 questions about your background.

16 Where are you from?

17 A. I'm from France.

18 Q. Where in France?

19 A. I am born in Lyons.

20 Q. Can you tell us about your educational background?

21 A. I studied law at the University of Lyons Trois in Lyons,  
22 France.

23 Q. Did you receive a degree?

24 A. Yes.

25 Q. What degrees do you hold?

Nlvnher2

Martin - Direct

1 Q. Go ahead.

2 A. Because of the transition from the car, which at that  
3 time -- from the horse, sorry, which at that time was our main  
4 client, we needed to switch to the car, so we started  
5 manufacturing luggages, handbags. And after that step by step  
6 we expanded our activities to other products like jewelry  
7 products, silk products.

8 Q. How would you describe Hermès as a company today?

9 A. I would say it's a house of creation and craftsmanship  
10 focused on the idea of manufacturing and creating very  
11 high-quality, lifestyle products.

12 Q. What is the value of intellectual property to Hermès?

13 A. We are a house of creation, so intellectual property rights  
14 are very important for Hermès.

15 Q. How does Hermès value its trademarks generally?

16 A. Of course, we consider it's one of our main assets.

17 Q. Does Hermès have a position on the value of the Birkin  
18 trademark?

19 A. The Birkin trademark is used to identify our best-selling  
20 products. So I would say after the Hermès trademark, it's  
21 probably our most important trademark.

22 Q. Does Hermès place a monetary value on the Birkin trademark?

23 A. No.

24 Q. Why not?

25 A. Because we are never to have a specific figure. For us it

Nlvnher2

Martin - Direct

1 is invaluable.

2 Q. I'm sorry. Did you say "unvaluable" or "invaluable"?

3 A. Invaluable. Sorry, sorry.

4 Q. How many product does Hermès offer?

5 A. I would say thousands.

6 Q. And where do the Birkin products rate in terms of how they  
7 sell?

8 A. Where are they sold you mean?

9 Q. No.

10 A. Sorry.

11 Q. No. Not geographically. Where do Birkin bags rank --

12 A. Ah, sorry.

13 Q. -- in the scheme of the product offered by Hermès?

14 A. As I said, for us it's our best selling product.

15 Q. Can you tell us a little bit about the customer demand for  
16 the Birkin?

17 A. It's very high.

18 Q. What do you mean by that?

19 A. I mean that it's so high that we are unable to satisfy all  
20 the demand.

21 Q. Does Hermès have a position on why the Birkin bag has been  
22 successful?

23 A. Of course, because of its design, because of its -- the raw  
24 material that we use, which is a very high quality, because of  
25 the craftsmanship that is used, the know-how that is used to

Nlvnher2

Martin - Direct

1 manufacture the same, and because it became like a status  
2 symbol.

3 Q. Does Hermès have an idea about how -- let me ask it  
4 differently. Does Hermès know how customers use their Birkin  
5 bags?

6 A. I mean, they are various ways that you use a bag. Of  
7 course, first it's a bag, so it's something that you can wear  
8 you can put your items in it. I think as I mentioned earlier,  
9 the Birkin bag is more than a bag. It is something that you  
10 own, that you are proud to show, that you are engaged with, so  
11 the way of living is also to own the same.

12 (Continued on next page)

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N1VsHER3

Martin - Direct

1 BY MR. WARSHAVSKY:

2 Q. And yesterday we saw the testimony of Robert Chavez.

3 Do you remember that?

4 A. Yes.

5 Q. Did you hear Mr. Chavez talk about the wish list?

6 A. Yes.

7 Q. Does Hermès keep track of how many wish lists there are?

8 A. No.

9 Q. Can Hermès currently meet demand for the Birkin trademark?

10 A. No.

11 Q. Does Hermès create that scarcity?

12 A. No.

13 Q. So what explains that scarcity?

14 A. The first point is the raw material we use. We only use  
15 very high-quality raw material. And unfortunately we are  
16 unable to find sufficient raw material to manufacture more  
17 bags.

18 The second is linked to the knowhow that is requested  
19 in order to manufacture a handbag. And unfortunately, despite  
20 the fact that we tried to open new manufacturing unit and to  
21 train new craftsman, we are unable to have sufficient  
22 experience, experienced craftsman to manufacture all the bags.

23 Q. Does Hermès consider the Birkin handbag itself to be  
24 famous?

25 A. Yes.



NlVsHER3

Martin - Direct

1 Q. Why is that?

2 A. Because it's our top-selling product, our most iconic bag,  
3 and our bag, the product division where we the fame of Hermès  
4 is more important.

5 Q. Does Hermès consider the Birkin trademark to be a famous  
6 trademark?

7 A. Yes.

8 Q. Why is that?

9 A. Because it identifies our most iconic products and because  
10 it is used in all the press and media to describe one of the  
11 most iconic-owned bag.

12 Q. I would like to now show you a few Birkin bags.

13 MR. WARSHAVSKY: Your Honor, may I approach the  
14 witness with the handbags?

15 THE COURT: Yes.

16 Q. So let's start with what's been marked as Exhibit 26, which  
17 is the black Birkin handbag. Can you maybe hold that up.

18 Is that in fact a Birkin handbag?

19 A. Yes.

20 MR. WARSHAVSKY: Your Honor, we would offer Exhibit 26  
21 into evidence.

22 MR. MILLSAPS: No objection, your Honor.

23 THE COURT: Received.

24 (Plaintiff's Exhibit 26 received in evidence)

25 Q. While you're holding the handbag, can you show us some of

Nlvnher4

Martin - Cross

1 Q. In Hermès' opinion, how has the Birkin brand been diluted?

2 A. I think we invested a lot of time and money in order to  
3 have a trademark as famous as Birkin. As I mentioned earlier,  
4 NFT is probably part of the future of our company. The fact  
5 that our main trademark has been used by a third party without  
6 our authorization on the digital asset, which is similar to our  
7 product, if we are to enter into this new digital world, if we  
8 want to bring our most iconic handbag in this digital world,  
9 there would always be a reference to this MetaBirkin. And I  
10 think that being the first is a first, and we lost this  
11 opportunity of being the first on the market, which I think is  
12 really something very impactful for Hermès.

13 MR. WARSHAVSKY: Thank you, Mr. Martin.

14 I have no further questions at this time.

15 THE COURT: Cross-examination.

16 CROSS-EXAMINATION

17 BY MR. MILLSAPS:

18 Q. Good morning, Mr. Martin.

19 A. Good morning.

20 Q. As you know, my name is Rhett Millsaps, and I represent  
21 Mason Rothschild. Thank you for being here today.

22 It is your understanding that the MetaBirkins are  
23 flat, two dimensional digital pictures, isn't that right?

24 A. I am not an IT expert so I will rely on the expert which  
25 explains that today that's right.

N1VsHER5

Martin - Redirect

1 your advertisement in the street. But thereafter I saw it was  
2 not the same media.

3 Q. OK. And you're talking about things like bus stops, for  
4 example, or billboards?

5 A. Yes, billboard.

6 MR. WARSHAVSKY: No further questions.

7 THE COURT: OK. Anything else?

8 MR. MILLSAPS: No, your Honor.

9 THE COURT: Thank you very much. You may step down.

10 (Witness excused)

11 Who is the next witness?

12 MR. WARSHAVSKY: Your Honor, the next witness is  
13 Mr. Rothschild.

14 THE COURT: OK. I need to explain to the ladies and  
15 gentlemen that you should not worry about the order of the  
16 witnesses or who is calling a witness, who is not calling a  
17 witness, because Mr. Rothschild, even though he's being  
18 technically called by both sides, we're going to let his  
19 lawyers do the questioning first because it makes more logical  
20 sense. But there is nothing special about it, it's just the  
21 way things work.

22 So let's get the witness up here.

23 SONNY ESTIVAL,

24 called as a witness by the Defendants,

25 having been duly sworn, testified as follows:

N1VsHER5

Estival - Direct

1 THE DEPUTY CLERK: Please be seated.

2 State your name and spell your last name for the  
3 record.

4 THE WITNESS: Sonny Estival. I go by Mason  
5 Rothschild.

6 THE DEPUTY CLERK: Spell the first whole name.

7 THE WITNESS: S-o-n-n-y E-s-t-i-v-a-l.

8 THE COURT: Just so we're clear, your birth name is  
9 Sonny Estival, but you go by the name Mason Rothschild; is that  
10 it?

11 THE WITNESS: Yes.

12 THE COURT: Go ahead.

13 DIRECT EXAMINATION

14 BY MR. HARRIS:

15 Q. Mr. Rothschild, good afternoon.

16 A. Good afternoon.

17 Q. If I don't keep my voice up, please tell me.

18 A. OK.

19 Q. Thank you.

20 If for any reason you need to take a break,  
21 Mr. Rothschild, just please let me know and we can have a  
22 break.

23 A. Thank you.

24 Q. Mr. Rothschild, is art important to you?

25 A. Yes.